IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9523 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PARSHOTTAMDAS S.PATEL

Versus

COLLECTOR OF SABARKANTHA

Appearance:

1. Special Civil Application No. 9523 of 1993

MR NIRAL MEHTA for MUKESH R SHAH, Advocate for the Petitioners

MR LR PUJARI, AGP for the Respondents

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI

Date of decision: 27/08/2003

ORAL JUDGEMENT

#. The petitioners have challenged the orders at Annexures: A & B to the petition made by the Collector and the State Government under the provisions of Sections

6A and 6C, respectively, of the Essential Commodities Act, 1955, whereunder 55 bags of groundnut which were seized from the premises of the petitioner were confiscated.

#. The petitioner was a license holder, whose premises were inspected on 28.11.'90 by the Civil Supplies Inspector and during the inspection, it was found that 55 bags of groundnut weighing 19 quintals and 25 Kg. and of the value of 16,362.50 ps. were kept by the petitioner in the godown which was not mentioned in the license, and that there was no entry made in the stock register of such stock. A show cause notice was issued to the petitioner in this behalf, for the breach of the provisions of Clauses-18(3)(1) and 23 of the Gujarat Essential Articles (Licensing Control & Stock Declaration) Order, 1981 and Conditions 2(a), 4 (1) and 5 of the Conditions of License.

2.1 The petitioner replied to the show cause notice by stating that he had not committed breach of any of the Condition of the License or the provisions of the Licensing Order. According to him, the stock register was correctly maintained on the day of the inspection and the stock in the shop tallied with the stock mentioned in the register. The petitioner pleaded that the stock which was confiscated was wrongly confiscated, because, it was the agricultural produce of his brother. He produced an abstract of village form 7/12 of his brother's Khata.

2.2 The Collector, by the impugned order at Annexure:A passed on 9.4.'91, held that the explanation given by the petitioner was not acceptable, because, the stock was seized from the premises which were of the ownership of the petitioner. It was held that such defence was taken up only with a view to hide the breach committed by the petitioner after the stock was seized. It was held that the stock which was seized was of the ownership of the petitioner. The entire stock was, therefore, ordered to be confiscated under Section 6A of the Act.

#. The petitioner preferred an appeal against the said order as per the provisions of Section 6C of the Act and the State Government, after referring to the contentions of the petitioner and the findings of the Collector, dismissed the appeal simply on the ground that the appellant had taken up a plea that the stock did not belong to him. It was held that since the petitioner-appellant had, at several places, stated that

the stock belonged to his brother, there was no valid ground for returning the stock to the petitioner and the appeal was, therefore, misconceived.

#. The appellate authority in making the impugned order at Annexure:B, dealt with the appeal in rather, a slipshod manner by rejecting it simply on the ground that the appellant had taken up a plea that the stock did not belong to him. The appellate authority was required to consider the validity of the order made by the Collector under Section 6-A in which, he had, in terms, held that the defence that the stock did not belong to the petitioner could not be accepted because the ownership of the premises from which the stock was seized was of the petitioner and not of his brother. It was held that the stock belonged to the petitioner and was not reflected in the stock register and was kept in the godown which was not notified in the license. The appellate authority was required to examine the correctness of these findings and come to a conclusion whether there was any breach of the provisions of the Licensing Order or the Conditions of the License committed by the petitioner.

4.1 Confiscation of essential commodities can be done under Section 6-A of the said Act if the Collector is satisfied that there has been contravention of the Order. Section 6-C enables the appellate authority to examine the correctness of the order of confiscation made under Section 6-A and to confirm, modify or annul that order, as it may think fit, after hearing the appellant. In the present case, the appellate authority did not consider the contention raised by the appellant to the effect that there was no breach of the provisions of the Order or the Conditions of the License and dismissed the appeal simply by observing that the appellant had stated that the stock did not belong to him and, therefore, there was no question of returning the stock to the appellant.

#. The moot question before the appellate authority was, whether confiscation was justified which would depend on the fact whether there was breach of the provisions of the Licensing Order or the terms and conditions of the License. The appellate authority has, therefore, committed an error in exercise of its jurisdiction by not examining the validity of the order of the Collector on the ground whether there was any contravention of the provisions of the Licensing Order or the conditions of the License.

#. The impugned order made by the appellate authority under Section 6C of the Essential Commodities Act, 1955,

a copy of which is at Annexure:B to the petition is, therefore, hereby set aside with a direction to the appellate authority to reconsider the appeal of the petitioner and take a fresh decision in accordance with law thereon expeditiously. Rule is made absolute accordingly with no order as to costs.

[R.K. ABICHANDANI, J.]

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